

Bruce T. Beesley

Honorable Bruce T. Beesley
United States Bankruptcy Judge



Entered on Docket
March 14, 2019

LAW OFFICES OF AMY N. TIRRE
3715 Lakeside Drive, Suite A
Reno, NV 89509
(775) 828-0909 Telephone
(775) 828-0914 Facsimile
E-mail: amy@amytirrelaw.com

LAW OFFICES OF AMY N. TIRRE,
A Professional Corporation
AMY N. TIRRE, ESQ. #6523
3715 Lakeside Drive, Suite A
Reno, NV 89509
Telephone: (775) 828-0909
Facsimile: (775) 828-0914
E-mail: amy@amytirrelaw.com

ROBISON, SHARP, SULLIVAN & BRUST
FRANK C. GILMORE, ESQ. #10052
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
E-mail: fgilmore@rssblaw.com

Counsel for Allan G. Holms

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:

BAKKEN RESOURCES, INC.,

Debtor.

Case No. BK-18-17254-btb

Chapter 11

**ORDER APPROVING STIPULATION
FOR DISMISSAL OF BANKRUPTCY
CASE AND DISMISSING BANKRUPTCY
CASE**

Hearing Date: February 15, 2019
Hearing Time: 10:00 a.m.

Cont'd Hearing Date: March 8, 2019
Hearing Time: 9:00 a.m.

The Stipulation for Dismissal of Bankruptcy Case (Doc. 245) ("Stipulation") having come
before this court for hearing on March 8, 2019; Samuel A. Schwartz, Esq. appearing for Debtor

LAW OFFICES OF AMY N. TIRRE
 3715 Lakeside Drive, Suite A
 Reno, NV 89509
 (775) 828-0909 Telephone
 (775) 828-0914 Facsimile
 E-mail: amy@amytirrelaw.com

1 Bakken Resources, Inc. ("Bakken" or "Debtor"); Edward M. McDonald, Jr., Esq., attorney for the
 2 United States Trustee for Region 17, Tracy Hope Davis appearing; Amy N. Tirre, Esq. and Frank C.
 3 Gilmore, Esq., appearing for Allan G. Holms; Cecilia Lee, Esq., appearing for James M. Holms,
 4 Personal Representative of the Estate of Val M. Holms and managing member of Holms Energy,
 5 LLC; Mead A. Dixon, Esq., appearing for Dan Anderson; and Seth J. Adams, Esq., of Woodburn
 6 and Wedge, appearing for Manuel Graiwer; the Court having reviewed the Stipulation and the
 7 Objection of the United States Trustee to Stipulation for Dismissal of Bankruptcy Case (Doc. 246)
 8 and the Objection to Stipulation for Dismissal of Bankruptcy Case and Joinder filed by Dan
 9 Anderson (Doc. 250), and having heard the arguments of counsel, having made its findings of fact
 10 and conclusions of law on the record pursuant to Fed. R. Bank. P. 7052, and 9014 and Fed. R. Civ.
 11 P. 52, and good cause appearing,

12 IT IS HEREBY ORDERED that:

13 1. The Stipulation attached hereto as Exhibit 1 is APPROVED as binding on and among
 14 the parties to the Stipulation.

15 2. By way of this Order, the Court makes no findings and neither approves nor
 16 disapproves of the terms of the Stipulation, including, but not limited to, the fees set forth in
 17 Paragraphs 4 through 8.

18 3. As set forth in the Stipulation, William Wood in his capacity as the interim director
 19 of Bakken has authority over Bakken's investment accounts and has the right to open or close
 20 financial accounts as he sees fit, which authority survives the dismissal of this bankruptcy case.

21 4. Upon receipt of an invoice, Bakken shall promptly pay the fees due and owing to the
 22 Office of the United States Trustee, which obligation shall survive the dismissal of this bankruptcy
 23 case.

24 5. The bankruptcy case is hereby DISMISSED.
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6. This Order is effective immediately upon entry.

Submitted by:

APPROVE/DISAPPROVED

LAW OFFICES OF AMY N. TIRRE,
A Professional Corporation

TRACY HOPE DAVIS
UNITED STATES TRUSTEE, REGION 17

By /s/ Amy N. Tirre
AMY N. TIRRE, ESQ.
Counsel for Allan G. Holms

By Edward M. McDonald Jr.
EDWARD M. McDONALD, JR., ESQ.
Attorney for the United States Trustee

APPROVED/~~DISAPPROVED~~

APPROVED/~~DISAPPROVED~~

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

DOTSON LAW

By /s/ Samuel A. Schwartz
Samuel A. Schwartz, Esq.
Proposed Counsel for Debtor

By /s/ Mead A. Dixon
Mead A. Dixon, Esq.
Counsel for Dan Anderson

APPROVED/~~DISAPPROVED~~

APPROVED/~~DISAPPROVED~~

WOODBURN AND WEDGE

LEE HIGH, LTD.

/s/ Seth J. Adams
Seth J. Adams, Esq.
Counsel for Manuel Graiwer

/s/ Cecilia Lee
Cecilia Lee, Esq.
*Counsel for James M. Holms, Personal
Representative of the Estate of Val M. Holms and
Managing Member of Holms Energy, LLC*

LAW OFFICES OF AMY N. TIRRE
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Reno, NV 89509
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E-mail: amy@amytirre.com

ALTERNATIVE METHOD RE: RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

- ☐ The Court has waived the requirement set forth in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved or failed to respond to the documents]:
 - EDWARD M. McDONALD, JR., ESQ. - Approved
 - SAMUEL A. SCHWARTZ, ESQ. - Approved
 - MEAD A. DIXON, ESQ. - Approved
 - CECILIA LEE, ESQ. - Approved
 - SETH J. ADAMS, ESQ. - Approved
- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR9014(g), and that no party has objected to the form or content of the order.

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LAW OFFICES OF AMY N. TIRRE
3715 Lakeside Drive, Suite A
Reno, NV 89509
(775) 828-0909 Telephone
(775) 828-0914 Facsimile
E-mail: amy@amytirrelaw.com

EXHIBIT 1

EXHIBIT 1

LAW OFFICES OF AMY N. TIRRE,
A Professional Corporation
AMY N. TIRRE, ESQ. #6523
3715 Lakeside Drive, Suite A
Reno, NV 89509
Telephone: (775) 828-0909
Facsimile: (775) 828-0914
E-mail: amy@amytirrelaw.com

E-Filed: March 5, 2019

ROBISON, SHARP, SULLIVAN & BRUST
FRANK C. GILMORE, ESQ. #10052
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
E-mail: fgilmore@rssblaw.com

Counsel for Allan G. Holms

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:

BAKKEN RESOURCES, INC.,

Debtor.

Case No. BK-18-17254-btb

Chapter 11

**STIPULATION FOR DISMISSAL OF
BANKRUPTCY CASE**

Hearing Date: February 15, 2019
Hearing Time: 10:00 a.m.

Cont'd Hearing Date: March 8, 2019
Hearing Time: 9:00 a.m.

IT IS HEREBY STIPULATED by and between Allan G. Holms, by and through his counsel, Robison, Sharp, Sullivan & Brust and Law Offices of Amy N. Tirre, APC; Debtor Bakken Resources, Inc. ("Debtor" or "Bakken"), by and through its counsel Brownstein Hyatt Farber Schreck, LLP ("Brownstein Hyatt") and Lowenstein Sandler LLP ("Lowenstein Sandler"); James M. Holms, Personal Representative of the Estate of Val M. Holms and managing member of Holms Energy, LLC, by and through his counsel Cecilia Lee, Esq. and Elizabeth High, Eq., of Lee High, Ltd.; Manuel Graiwer, by and through his counsel Woodburn and Wedge, as follows:

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E-mail: amy@amytirrelaw.com

RECITALS

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2 1. On December 7, 2018, Debtor filed its voluntary petition for relief under Chapter 11
3 of the Bankruptcy Code (Doc 1).

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5 2. On January 18, 2019, Allan Holms filed his Motion to Dismiss (Doc. 145).

6 3. On January 22, 2019, James M. Holms, Personal Representative of the Estate of Val
7 M. Holms, filed his Joinder to Motion to Dismiss (Doc. 157).

8 4. On January 30, 2019, James M. Holms, Personal Representative of the Estate of Val
9 M. Holms, as managing member of Holms Energy, LLC, filed a Joinder to Motion to Dismiss (Doc.
10 168).

11 5. On February 4, 2019, Manuel Graiwer filed his Joinder to the Motion to Dismiss
12 (Doc. 197).

13 6. On February 4, 2019, Debtor filed its Objection to the Motion to Dismiss (Doc. 200).

14 7. On February 11, 2019, Allan Holms filed his Reply to Debtor's Objection to the
15 Motion to Dismiss (Doc. 212).

16 8. On February 13, 2019, Debtor filed its Notice of Limited Consent to Dismissal and
17 Withdrawal of Declaration in Support of the Objection to Motion to Dismiss (Doc. 220).

18 9. A hearing on the Motion to Dismiss was held on February 15, 2019, and it was
19 continued until March 8, 2019, because the parties, through counsel, had met and determined that
20 they could resolve the Motion to Dismiss by way of a stipulation, which terms are set forth herein.
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23 **STIPULATION**

24 1. Debtor's Chapter 11 bankruptcy case shall be dismissed. The order dismissing the
25 bankruptcy case ("Dismissal Order") shall be effective upon entry. All other pending motions and
26 applications shall be deemed moot.

27 2. Pursuant to Section 3.4 of the Amended and Restated Bylaws of Bakken, the Board
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LAW OFFICES OF AMY N. TIRRE
3715 Lakeside Drive, Suite A
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(775) 828-0909 Telephone
(775) 828-0914 Facsimile
E-mail: amy@amytirrelaw.com

1 of Directors shall, prior to the entry of the Dismissal Order, hold a vote to fill the vacancies of each
2 standing director that elects to resign effective as of the entry of the Dismissal Order. The Board of
3 Directors shall vote to fill each vacancy left by each resigning director. If all standing
4 directors resign effective as of the entry of the Dismissal Order, then the Board of Directors will
5 vote to fill one vacancy by appointing William Wood as interim director for Bakken. If less than
6 all standing directors resign effective as of the entry of the Dismissal Order, then the Board of
7 Directors will vote to fill each out-going vacancy with individuals selected and designated by
8 William Wood. David Hindman, CRO of Bakken, and Richard Robbins, VP, Restructuring of
9 Bakken, the only current officers of Bakken, will resign prior to the entry of the Dismissal
10 Order. Bakken's out-going directors and officers and the interim director will cooperate with
11 any transition work required to support these resignations including making registered agent
12 changes and filing 8-K notices, as required, including the payment of the professional fees
13 agreed to herein. Bakken, Lowenstein Sandler, and AP Services, LLC shall cooperate timely and in
14 good faith with the transition of Bakken's books and records at the reasonable request of Bakken's
15 interim director.
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18 4. Lowenstein Sandler's post-petition fees and costs through February 15, 2019 are
19 capped in the amount of \$400,000 and it agrees to accept 80% of that amount, \$320,000 as payment
20 in full; Lowenstein shall verify and apply the retainer that it is holding to the \$320,000 and Bakken
21 will pay the balance due from its cash reserves; payment to be made within 10 days of the dismissal
22 of the bankruptcy case, and which payment may be made by the current officers.
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24 5. AP Services, LLC's post-petition fees and costs through February 15, 2019 are
25 capped in the amount of \$400,000 and it agrees to accept 80% of that amount, \$320,000 as payment
26 in full; AP Services, LLC shall verify and apply the retainer that it is holding to the \$320,000 and
27 Bakken will pay the balance due; payment to be made within 10 days of the dismissal of the
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1 bankruptcy case, and which payment may be made by the current officers.

2 6. Brownstein Hyatt's post-petition fees and costs through February 15, 2019 are capped
3 in the amount of \$80,000 and it shall verify and apply the retainer that it is holding to the \$80,000
4 and Bakken will pay the balance due; payment to be made within 10 days of the dismissal of the
5 bankruptcy case, and which payment may be made by the current officers.

6 7. AP Services, LLC agrees that it shall not bill for any work performed after 1 p.m. on
7 February 15, 2019, unless it is requested to perform work by Allan G. Holms, his counsel, or an
8 interim director.

9 8. Both Lowenstein Sandler and Brownstein Hyatt's fees and costs incurred for the
10 documentation and consummation of this settlement are capped in the aggregate total amount of
11 \$25,000 (this amount is in addition to the amounts referred to in paragraph 4, *supra*). Lowenstein
12 Sandler and Brownstein Hyatt shall keep detailed time records for all fees incurred in the
13 documentation and consummation of this settlement, and shall be paid within 30 days of receipt of
14 the fee invoices.

15 9. For each director that resigns from the Board of Directors effective as of the entry of
16 the Dismissal Order, Allan Holms and the Estate of Val Holms will execute a covenant not to collect
17 any judgment obtained against Bakken's directors beyond available insurance coverage, relating to
18 any claims that may be asserted, and the covenant not to collect will be on behalf of Allan Holms
19 and the Estate of Val Holms. For each director that does not resign from the Board of Directors
20 effective as of the entry of the Dismissal Order, neither Allan Holms nor the Estate of Val Holms
21 will execute a covenant not to collect as to that director, nor will Allan Holms or the Estate of Val
22 Holms provide any other form of release to any directors that do not resign from the Board of
23 Directors effective as of the entry of the Dismissal Order. Allan Holms and the Estate of Val Holms
24 also agree not to challenge the execution by the company of a covenant not to collect any judgment
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obtained against any of Bakken's directors that resign from the Board of Directors effective as of the entry of the Dismissal Order, relating to any claims that may be asserted on behalf of or by the company, and this agreement shall survive the execution of this Stipulation and dismissal of the bankruptcy case. Allan Holms and the Estate of Val Holms will not take any actions which would cause Bakken to fail to honor any enforceable indemnification and exculpation provisions in favor of Bakken's officers and directors, including under Bakken's governing documents and indemnity agreements. Allan Holms, the Estate of Val Holms, and the company also consent to full releases for Lowenstein Sandler, Brownstein Hyatt, and AP Services, LLC, for all work done through the date of dismissal of the bankruptcy case.

10. The order of dismissal shall include language identifying an appointed designee (the interim director) for authority over Bakken's investment accounts and have the right to open or close financial accounts as they see fit.

11. Bakken will not oppose a stipulation between the Estate of Val Holms and Mari Holms to appoint a personal representative for the limited purpose of settling the ownership of Val Holms's 26 million shares.

IT IS SO STIPULATED.

DATED March 5, 2019.

DATED March 5, 2019.

ROBISON, SHARP, SULLIVAN & BRUST

LOWENSTEIN SANDLER LLP

And

And

LAW OFFICES OF AMY N. TIRRE
A Professional Corporation

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Amy N. Tirre
AMY N. TIRRE, ESQ.

/s/ Samuel A. Schwartz
SAMUEL A. SCHWARTZ, ESQ.

Counsel for Allan G. Holms

Counsel for Bakken Resources, Inc.

DATED March 5, 2019.

DATED March 5, 2019.

LEE HIGH, LTD.

WOODBURN AND WEDGE

/s/ Cecilia Lee

/s/ Seth J. Adams

CECILIA LEE, ESQ.

SETH J. ADAMS, ESQ.

*Counsel for James M. Holms, Personal
Representative of the Estate of Val M. Holms*

Counsel for Creditor Manuel Graiwer

LAW OFFICES OF AMY N. TIRRE
3715 Lakeside Drive, Suite A
Reno, NV 89509
(775) 828-0909 Telephone
(775) 828-0914 Facsimile
E-mail: amy@amytirrelaw.com

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, APC, that I am over the age of 18 and not a party to the above-referenced case, and that on March 5, 2019 I filed and served the foregoing **STIPULATION FOR DISMISSAL OF BANKRUPTCY CASE** as indicated:

 X **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

- JEFFREY L. COHEN jcohen@lowenstein.com
- MEAD DIXON mdixon@dotsonlaw.legal, mbogumil@dotsonlaw.legal
- FRANK C. GILMORE fgilmore@rssblaw.com, mdavis@rssblaw.com
- ELIZABETH A. HIGH e.high@lee-high.com, e.dendary@lee-high.com;s.ramos@lee-high.com
- CECILIA LEE e.high@lee-high.com, e.dendary@lee-high.com;s.ramos@lee-high.com
- EDWARD M. MCDONALD edward.m.mcdonald@usdoj.gov
- OMNI MANAGEMENT GROUP, LLC (se) sewing@omnimgt.com, ecf@omnimgt.com
- SAMUEL A. SCHWARTZ saschwartz@bhfs.com, ECF@bhfs.com;schwartzsr45599@notify.bestcase.com;sheacr80693@notify.bestcase.com;cshea@bhfs.com
- AMY N. TIRRE amy@amytirrelaw.com, admin@amytirrelaw.com
- U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov

 XX **BY MAIL:** by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on 5 March 2019, with postage thereon fully prepaid in the ordinary course of business.

Carl George
Eagle Private Equity, LLC
108 2nd Street
Excelsior, MN 55331

Willkie, Farr, Gallagher
787 7th Ave
New York, NY 10019-6099

BMB Consulting
41 Keyland Ct, Ste A
Bohemia, NY 11716-2635

Charter
P.O. Box 742617
Cincinnati, OH 45274-2617

Fishers Technology
575 E 42nd St
Boise, ID 83714-6322

Paul Law Group
902 Broadway, 6th Fl
New York, NY 10010-6039

LAW OFFICES OF AMY N. TIRRE
3715 Lakeside Drive, Suite A
Reno, NV 89509
(775) 828-0909 Telephone
(775) 828-0914 Facsimile
E-mail: amy@amytirrelaw.com

1 Sotek Solutions
2 400 North California
3 Helena, MT 59601-4968
4 Lemons, Grundy & Eisenberg
5 6005 Plumas Street 3rd Floor
6 Reno, NV 89519

Welborn, Sullivan, Meck, and Tooley PC
1125 17th St, Ste 2200
Denver, CO 80202-2024
GP, Inc.
40 West 14th St., Suite 4B
Helena, MT 59601

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8 DATED March 5, 2019.

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/s/ Genevieve DeLucchi
An Employee of Law Offices of Amy N. Tirre, APC

LAW OFFICES OF AMY N. TIRRE
3715 Lakeside Drive, Suite A
Reno, NV 89509
(775) 828-0909 Telephone
(775) 828-0914 Facsimile
E-mail: amy@amytirrelaw.com